

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT TODD SIEWERT,

Plaintiff,

v.

CAROLYN W. COLVIN,<sup>1</sup> Acting  
Commissioner of Social Security

Defendant.

CASE NO. C12-1637-JCC

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
REVERSING AND REMANDING  
THE COMMISSIONER'S DECISION

This matter comes before the Court on the Acting Commissioner's objections to the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge (Dkt. No. 18). Having thoroughly considered the parties' briefing and the relevant record, the Court hereby REJECTS the objections (Dkt. No. 18) and ADOPTS the Report and Recommendation (Dkt. No. 17) ("R&R") for the reasons explained herein. The Acting Commissioner's decision is REVERSED and REMANDED for further administrative proceedings.

**I. BACKGROUND**

An Administrative Law Judge ("ALJ") issued a decision denying Plaintiff's application

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<sup>1</sup> Carolyn W. Colvin, Acting Commissioner of Social Security is substituted for former Commissioner Michael J. Astrue under Federal Rule of Civil Procedure 25(d).

1 for supplemental security income benefits due to disability. (Tr. at 15–25.) Plaintiff appealed to  
2 this Court and his complaint was referred to a United States Magistrate Judge. (Dkt. No. 6.) The  
3 Honorable Brian A. Tsuchida, United States Magistrate Judge, prepared an R&R recommending  
4 that the case be reversed and remanded for further administrative proceedings because the ALJ  
5 failed to address Plaintiff’s right hand limitations at step two of the sequential evaluation process  
6 for disability claims. (Dkt. No. 17 at 3–4.) The R&R also concludes that the ALJ erred in failing  
7 to consider Plaintiff’s medically-determinable right hand limitations in assessing Plaintiff’s  
8 testimony about those limitations. (Dkt. No. 17 at 9.) The R&R rejected Plaintiff’s remaining  
9 challenges to the ALJ’s decision. (Dkt. No. 17 at 5–9.)

10 The Acting Commissioner objects to the R&R, arguing that the ALJ did consider  
11 Plaintiff’s right hand limitations at step two when she “specifically discussed Plaintiff’s ‘right  
12 medial nerve injury’” and cited Exhibit 1F/3. (Dkt. No. 18.) Plaintiff responds that the Acting  
13 Commissioner has waived this argument and that the ALJ’s passing mention of a single exhibit  
14 is not a clear and convincing reason for rejecting Plaintiff’s testimony about difficulty using his  
15 right hand. (Dkt. No. 19.)

## 16 **II. DISCUSSION**

### 17 **A. Standard of Review and Waiver**

18 The Court reviews *de novo* the portions of the R&R to which a party has filed timely  
19 objections. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The Court rejects Plaintiff’s  
20 argument that the Acting Commissioner waived her objection to the R&R. The Acting  
21 Commissioner argued to the Magistrate Judge that the ALJ properly evaluated all the medical  
22 and testimonial evidence in assessing Plaintiff’s residual functional capacity and finding him  
23 capable of past relevant work. (*See generally* Dkt. No. 15.) This argument fairly encompasses the  
24 Acting Commissioner’s more specific objection to the R&R, which is that the ALJ did consider  
25 Plaintiff’s right hand limitations in the sequential disability evaluation.

**B. Merits of the Objection**

The Court adopts the R&R's conclusion that the ALJ failed to properly address Plaintiff's right hand limitations. While an ALJ is not required to discuss all evidence presented, the ALJ must explain why "significant, probative evidence has been rejected" and must explain why uncontroverted medical evidence is rejected. *Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984) (per curiam). Although the ALJ provided clear and convincing reasons to support her conclusions about Plaintiff's arm injuries, the ALJ did not expressly address Plaintiff's problems with his right hand. (See Tr. at 18.) Plaintiff's problems with his right hand were documented in the uncontroverted medical records (see, e.g., Tr. 268, 364, 418). The R&R correctly concludes that the ALJ's discussion of Plaintiff's arm injuries and passing reference to only one of the numerous medical records discussing his right hand problems, does not provide a sufficient explanation for the ALJ's failure to include any limitations related to Plaintiff's right hand in the disability analysis. The Court ADOPTS this conclusion.

**III. CONCLUSION**

For the foregoing reasons, the Acting Commissioner's objections to the R&R (Dkt. No. 16) are REJECTED. The R&R is ADOPTED in full and the case is REVERSED and REMANDED for further proceedings consistent with the R&R.

DATED this 5th day of June 2013.



John C. Coughenour  
UNITED STATES DISTRICT JUDGE